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BY ECFS

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
TW-B204
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Submission – *National Exchange Carrier Association, Inc. – Petition to Amend Section 69.104 of the Commission's Rules,* RM No. 10603

Dear Secretary Dortch:

Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), the Ad Hoc Telecommunications Users Committee (the "Ad Hoc Committee"), through undersigned counsel, submits this *ex parte* letter in support of the Petition of the National Exchange Carrier Association ("NECA") for rulemaking referenced above (the "Petition").[1] For the reasons set forth below, the Commission should grant NECA's Petition and open a rulemaking to consider adoption of the rule NECA has proposed.

Under Section 1.407 of its Rules, 47 C.F.R. § 1.407, the Commission will grant a petition for rulemaking if it "determines that the petition discloses sufficient reasons in support of the action requested to justify the institution of a rulemaking proceeding, and notice and public procedure thereon are required ...." NECA's Petition easily meets this standard.

NECA has asked the Commission to open a rulemaking proceeding to consider an amendment to Section 69.104 that would prohibit non-price cap local exchange carriers ("LECs") from applying more than five subscriber line charges ("SLCs") to customer-ordered switched exchange access service provisioned using digital, high-capacity T-1 interfaces (*i.e.,* 1.544 Mbps digital circuit

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[1] On November 8, 2002, the Wireline Competition Bureau released a Public Notice seeking comment on NECA's Petition, DA 02-3060. Pursuant to the Public Notice, the comment period closed on December 12, 2002.

interfaces) when the customer provides the terminating channel equipment. Petition at 1. NECA and other commenting parties have referred to such service as "Digital Transport Service" or "DTS."

Section 69.104(a) of the Commission's Rules, 47 C.F.R. § 69.104(a), requires each non-price cap incumbent LEC ("ILEC") to assess one SLC for each line "that is or may be used for local exchange service." Because a T-1 access line provides the customer with the functional equivalent of 24 voice grade lines, ILECs must assess 24 SLCs on exchange access services provisioned using T-1 interfaces. NECA has asserted, however, that when the customer provides the customer premises equipment (CPE) used to derive individual voice grade lines from a T-1 facility, the loop provisioning of DTS is identical to that of Primary Rate Interface Integrated Services Digital Network (PRI ISDN) services, and therefore the non-traffic sensitive (NTS) loop costs of the two services are identical.

The Commission's Rules allow application of no more than five SLCs to PRI ISDN,[2] even though it allows customers to obtain 23 voice-grade channels and one data channel from a T-1 facility. The Commission has found that the non-traffic sensitive (NTS) loop costs of provisioning PRI ISDN, excluding switching costs, are approximately five times the NTS costs of single-channel analog service.[3] NECA has argued that, because PRI ISDN services and DTS are provisioned identically, the Commission should apply the same reasoning and rule to DTS. NECA's argument is bolstered by the Reply Comments of CenturyTel, Inc., a carrier that offers DTS and has reported that "the ratio of NTS loop costs of CenturyTel's DTS service to standard analog service is approximately 5.33:1 . . . [therefore,] the ratio of NTS loop costs of CenturyTel's DTS to PRI ISDN is approximately 1:1."[4]

According to NECA, DTS customers currently pay roughly three times as much in end user charges as PRI ISDN customers, resulting in their being "saddled with a SLC burden that far exceeds the NTS loop costs of the service

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2 47 C.F.R. § 69.104(P)(2).

3 *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and End User Common Line Charges,* CC Dkts. Nos. 96-262, 94-1, 91-213, and 95-72, First Report and Order, 12 FCC Rcd 15982 (1997) at ¶ 115 (amending rules for price cap LECs); *see Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, et al.,* CC Dkts. Nos. 00-256, *et al.* (2001) at ¶ 56 (extending the same approach to non-price cap LECs).

4 Reply Comments of CenturyTel, Inc. in RM No. 10603 (filed Dec. 16, 2002) ("CenturyTel Reply") at 3. CenturyTel has provided no cost data in support of these claims. Although the Ad Hoc Committee will not endorse the accuracy of CenturyTel's claim absent cost data, it believes that they are of sufficient weight to satisfy the standard for initiating a rulemaking.

provided." Petition at 5. This unequal SLC treatment, NECA has argued, creates an artificial price incentive for subscribers to choose PRI ISDN service over similar services that may be more efficient or more effective for a particular customer's needs. *See* Petition at 5-6. Indeed, rural carriers TDS Telecommunications Corporation and CenturyTel, Inc. have pointed out that PRI ISDN service is often unavailable in rural central offices, but the high cost of similar high capacity services discourages customers from purchasing them.[5]

As CenturyTel has noted, because the 24 SLCs far exceed the NTS costs of DTS, NECA's proposed rule change would "eliminate an implicit subsidy that currently flows from T-1 customers to local exchange customers" and thereby "further the FCC's objective to move all rates toward cost."[6]

AT&T, NECA's sole opponent in this proceeding, has advanced four principal arguments against the Petition. First, AT&T has challenged NECA's claim that, because the two services are provisioned identically, the NTS costs of DTS are equivalent to the NTS costs of PRI ISDN.[7] Second, AT&T has assailed the data on which NECA has relied in asserting that PRI ISDN and DTS are provisioned identically; AT&T claims that NECA's sample is too small to be representative.[8] Third, AT&T argues that "NECA is proposing to shift recovery of common line costs from the cost-causing end users to IXCs and other out-of-region carriers through . . . carrier access charges or the USF."[9] Fourth, AT&T asserts that NECA has failed to demonstrate that the common line costs of DTS will be fully recovered by 5 SLCs.[10]

AT&T's arguments are not sufficient to block initiation of the requested rulemaking. Century Tel., a provider of DTS, counters AT&T's skepticism about the cost similarities between DTS and PRI ISDN with contentions that the NTS costs of PRI ISDN and DTS are virtually identical.[11] NECA has rebutted AT&T's claim that its data sample is too small to be reliable by noting that "the Commission has long permitted NECA tariff filings to become effective based on

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5 Comments of TDS Telecommunications Corporation in DA 02-3062 (filed Dec. 2, 2002) at 3; CenturyTel Reply at 4.

6 CenturyTel Reply at 5.

7 Opposition of AT&T Corp. in RM No. 10603 (filed Dec. 2, 2002) at 3, 11-12.

8 *Id.* at 3, 10-11.

9 *Id.* at 6-7.

10 *Id.* at 8-10.

11 CenturyTel Reply at 3. Again, the Ad Hoc Committee reserves final judgment on the accuracy of CenturyTel's claims pending its submission of supporting cost data in the rulemaking that should ensue from NECA's Petition.

data obtained from the [Rate Development Task Force],” the same body that generated the data on which NECA’s Petition relies.

As to AT&T’s accusation that NECA seeks to shift the costs of DTS to carrier common line (“CCL”) charges and the Universal Service Fund (“USF”), NECA and CenturyTel both point out that CCL charges are scheduled to end June 30 of this year, and that any shifting of costs to the USF would be negligible:[12] NECA estimates that adoption of the rule it has proposed would cause Interstate Common Line Support payments to non-price cap carriers to rise $13 million for the current Test Period.[13] The Ad Hoc Committee is always concerned about the size of the Universal Service Fund, and will follow this issue closely if the Commission opens the requested rulemaking. At this point, however, the Committee agrees with NECA, that the projected increase is “extremely small in comparison to the overall size of the universal fund [and] is clearly preferable to requiring customers of channelized T-1 services to continue to pay an implicit subsidy.”

NECA has carried its burden of providing sufficient reasons for its proposed rule to justify initiation of the proceeding it advocates. Accordingly, the Commission should grant NECA’s Petition.

Respectfully submitted,

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Ad Hoc Telecommunications Users
Committee

Cc: Jeremy D. Marcus, Wireline Competition Bureau,
Pricing Policy Div. (3 copies, by hand)

[12] NECA Reply Comments in RM No. 10603 (filed Dec. 16, 2002) at 6; CenturyTel Reply at 5.

[13] NECA Reply at 6.